

# ITEL

5-072A030

## IteI Rail Corporation

55 Francisco  
San Francisco, California 94133  
(415) 984-4000  
Telex 34234

14595  
RECORDATION NO. .... Filed 1425

February 26, 1985

MAR 13 1985 -2 15 PM

Mr. James H. Bayne, <sup>INTERSTATE COMMERCE COMMISSION</sup> Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

No. MAR 13 1985  
Date .....  
Fee \$ 20.00  
ICC Washington, D. C.

Dear Mr. Bayne:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of IteI Rail Corporation for filing and recordation with the Interstate Commerce Commission, four counterparts of the following document:

New Number Sublease Agreement dated August 27, 1984 between East Camden and Highland Railroad Company, Minnesota, Dakota and Western Railway Company and FMC Finance Corporation.

Please cross-reference <sup>index</sup> this Sublease under the Lease Agreement dated as of August 31, 1979 between FMC Finance Corporation and East Camden and Highland Railroad Company which was filed with the I.C.C. on October 12, 1979 and given Recordation No. ~~082979~~ / 0880.

The names and addresses of the parties to the aforementioned are:

1. East Camden and Highland Railroad Company (Sublessor)  
Box 3180  
Camden, Arkansas 71701
2. Minnesota Dakota and Western Railway Company (Sublessee)  
P.O. Box 7747  
Boise, Idaho 83707
3. FMC Finance Corporation (Lessor)  
200 Randolph Drive  
Chicago, Illinois 60601

The equipment covered by this Sublease is one hundred (100) A.A.R. mechanical designation XM 50', Plate C, end-of-car cushioning boxcars, bearing reporting marks MDW 5000-5099.

Also enclosed is a check in the amount of \$20.00 for the required recording fee.

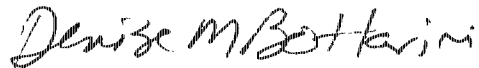
*C. Cunningham*

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Mr. James H. Bayne, Secretary  
February 26, 1985  
Page Two

Please stamp all counterparts of the enclosed Sublease with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to my attention.

Sincerely,

A handwritten signature in cursive script that reads "Denise M. Bottarini".

Denise M. Bottarini  
Legal Assistant

DMB/vdv/98

cc: Virginia Hanger  
Itel Rail Corporation.

MAR 13 1985 -2 15 PM

BOXCAR SUBLEASE INTERSTATE COMMERCE COMMISSION

THIS SUBLEASE AGREEMENT (the "Sublease") made as of this 27th day of August, 1984, between EAST CAMDEN & HIGHLAND RAILROAD COMPANY, an Arkansas corporation, Box 3180, Camden, Arkansas 71701, as the sublessor ("Sublessor") and MINNESOTA, DAKOTA AND WESTERN RAILWAY COMPANY, a Minnesota corporation, P.O. Box 7747, Boise, Idaho 83707, as the sublessee ("Sublessee"), and FMC FINANCE CORPORATION, a Delaware corporation, with offices at 200 Randolph Drive, Chicago, IL 60601 ("Lessor");

WHEREAS, Lessor and Sublessor are parties to the Lease Agreement dated August 31, 1979 ("Lease"), pursuant to which Lessor has leased two hundred (200) boxcars described therein to Sublessor;

WHEREAS, Lessor has appointed Itel Rail Corporation ("Itel Rail") as manager of the Cars, to perform all of Lessor's obligations and duties as set forth therein;

WHEREAS, Sublessor has likewise appointed Itel Rail to perform all of Sublessor's obligations and duties as set forth herein, except only those specified in paragraph 3(a) of this Boxcar Sublease;

WHEREAS, Lessor and Sublessor agree that it is to their mutual advantage to enter into this sublease agreement with Sublessee.

NOW, THEREFORE, the parties agree to enter into the Sublease as set forth herein:

1. Scope of Sublease.

(a) Sublessor agrees to lease to Sublessee, and Sublessee agrees to lease from Sublessor upon the terms and conditions set forth herein, one hundred (100) items of equipment of the number, type, construction and other description set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Sublease. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by the parties shall be a part of this Sublease. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car."

(b) The intent of the parties to this Sublease is that Sublessor and Lessor shall at all times be and remain the sublessor and lessor of all Cars. Sublessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent.

2. Term.

(a) This Sublease shall remain in full force until it is terminated as to all the Cars as provided herein. The term of the Sublease with respect to each Car described on each Schedule shall commence at 12:01 p.m. on the date and at the location that such Car is remarked pursuant to Subsection 3(a)

and shall expire as to all Cars described on each Schedule on December 1, 1994 (the "Initial Term"). The Initial Term of the August 31, 1979, Lease is also hereby amended to expire on December 1, 1994.

(b) If this Sublease has not been terminated early and no unremedied default has occurred pursuant to Section 9, the Sublease shall automatically be extended for not more than five (5) consecutive periods of twelve (12) months each (the "Extended Term(s)") with respect to all Cars described on each Schedule, provided however, that Lessor or Sublessee may terminate this Sublease at the end of the Initial Term or any Extended Terms as to all, but not fewer than all, Cars on the Schedules by written notice delivered to the other party not less than twelve (12) months prior to the end of the Initial Term or any Extended Terms.

### 3. Supply Provisions.

(a) Sublessee hereby approves the specifications of the Cars delivered to it by Sublessor. Sublessor shall, at its expense, remark the Cars at East Camden, Arkansas, with the railroad markings of Sublessee in compliance with all applicable regulations. Sublessor shall at Lessor's expense (and at not to exceed an agreed charge) modify Cars as follows: (1) Grind interior welds on the three welds from each end of car; (2) Grind welds on door posts; and (3) install rain gutters over each door.

(b) Each Car shall be deemed delivered and subject to the terms and provisions of this Sublease at 12:01 p.m. on the date and at the location such Car is remarked ("Delivery"). After the Cars have been remarked, the Cars shall be loaded and moved to the Canadian Pacific Railroad Line at Kenora, Ontario, Canada, at no cost to Sublessee or Sublessor as soon as is consistent with mutual convenience and economy. Notwithstanding that Sublessee may not have immediate physical possession of the Cars leased hereunder, Sublessee agrees to pay the rent set forth in this Sublease. To move the Cars to Kenora, Ontario, Canada, and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), Sublessor agrees to assist Sublessee in monitoring Car movements and, when deemed necessary by Sublessee and Sublessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules. If Sublessor incurs expenses in having other railroads move Cars in accordance with this Section with Sublessee's approval, except for any expenses incurred in the initial delivery of such Cars to Kenora, Ontario, Canada, pursuant to this Section, Sublessee shall reimburse Sublessor for such expenses within ten (10) days of receipt of invoice from Sublessor. For the purposes hereof, the term "Initial Loading" as to each Car, shall be the earliest to occur of either (1) the date such Car shall have been loaded off Sublessee's railroad line with the first load of freight; or

(2) the date such Car shall have been loaded from Kenora, Ontario, Canada, with the first load of freight or (3) the thirty-first (31st) day after delivery of such Car pursuant to this Section.

(c) So long as any or all Cars on the Schedules remain undelivered, Sublessee shall not lease any additional boxcars from any other party.

(d) Delivery of each Car shall be no later than 90 days after completion of the modifications referred to in paragraph 3(a) of this Sublease. Additional Cars shall be leased from Sublessor by Sublessee only upon the mutual agreement of the parties. During the term of this Sublease, Lessor may, at its expense, replace any or all Cars with similar boxcars upon prior written notice from Lessor to Sublessee; provided, however, that any such replacement shall not prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities.

4. Record Keeping.

(a) Sublessor shall, at its expense and with Sublessee's assistance, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record-keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Sublease. Such matters shall include, but are not limited to:

(i) preparation of appropriate AAR interchange agreements with respect to the Cars;

(ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and

(iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars.

Sublessor requests and Sublessee hereby agrees and authorizes Itel Rail to subscribe to the car hire exchange tape, Train 62 Junction Advices, and the Train 11 Location Advices with respect to the Cars and agrees to execute any other documents necessary for such authorization.

(b) Sublessor shall perform all record-keeping functions relating to the use of the Cars by Sublessee and other railroads, including but not limited to, car hire reconciliation, collection, and receipt of Revenues (as hereinafter defined in Section 7) from other railroad companies, maintenance and repair and billing in accordance with AAR Interchange Rules ("Interchange Rules"). Sublessor requests and Sublessee hereby agrees and authorizes Itel Rail to immediately upon receipt from other railroads of any Revenues in the form of a draft, check or other instrument payable to Sublessee, endorse and deposit such draft, check or other instrument into an account approved by Lessor and to distribute such Revenues as set forth in Subsection 7(d). All record-keeping performed by Sublessor hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and



maintained by Sublessor in a form suitable for reasonable inspection by Sublessee from time to time during Sublessor's regular business hours.

Upon Sublessor's reasonable request, Sublessee shall supply Sublessor with daily telephone reports of the number of Cars in Sublessee's possession or control. Sublessee shall, on a monthly basis, supply Sublessor with copies of Sublessee's interchange records with respect to the Cars interchanged to and from Sublessee's railroad line. Upon Sublessor's reasonable request, Sublessee shall promptly provide Sublessor with records of Sublessee's car hire payables. In the event Sublessee fails to provide Sublessor with records of car hire payables, and as a result, a user or handling railroad refuses to pay Revenues (as hereinafter defined in Section 7) owed, Sublessee shall, within ten (10) days after Sublessor's request, pay to Sublessor such unpaid Revenues.

Sublessor has the right to offset against Sublessee's revenue sharing portion as set forth in Subsection 7(c), any sums which are owed by Sublessee to Sublessor, but which remain unpaid.

5. Maintenance, Tax and Insurance

(a) Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules; provided, however, that such

repair, maintenance and servicing shall be performed at Sublessee's expense in the event it was occasioned by the fault of Sublessee, or arises in those instances in which the Interchange Rules would assign responsibility to Sublessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Sublessee shall, at its expense, inspect all Cars interchanged to it to ensure that such Cars are in good working order and condition and Sublessee shall be liable to Sublessor and Lessor for any repairs required for damage not noted at the time of interchange. Sublessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Sublessee's railroad line.

(b) Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition. Sublessee may make running repairs to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements or additions to any Car without Lessor's prior written consent. Sublessee shall be liable to Sublessor and Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor.

(c) As long as this Sublease shall remain in effect, Sublessee shall be responsible for the Cars:

(i) while in Sublessee's possession or control;  
and

(ii) in the same manner that Sublessee is responsible under Interchange Rules for similar equipment not owned by Sublessee.

Sublessee shall, at all times while this Sublease is in effect, at its own expense, cause to be carried and maintained (1) all risk, physical loss or damage insurance with respect to the Cars while in Sublessee's care, custody or control and (2) public liability insurance with respect to third-party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to Lessor. Sublessee shall furnish Sublessor and Lessor concurrently with execution hereof, and thereafter at intervals of not more than twelve (12) calendar months and, within 30 days of any written request, certificates of insurance evidencing the aforesaid insurance. All insurance shall be taken out in the name of Sublessee and shall name Sublessor and Lessor and any assignee of Lessor as additional named insureds and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days' prior written notice of any material changes in coverage or cancellation thereof. In the event that Sublessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested

parties and bill the cost to Sublessee. With respect to the additional insureds, Sublessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by or for the additional insureds. Sublessee shall require its insurer specifically to waive subrogation or claim or recovery with respect to any Other Insurance. Each policy obtained by Sublessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be evidenced on the Certificate of Insurance provided to the Lessor. In the event Sublessee shall be permitted to self-insure on any specified interests, and with Lessor's written approval, Sublessee hereby warrants to place the Sublessor and Lessor in the same position as if the relating insurance had been effected. Any and all deductibles in the described policies shall be assumed by the Sublessee.

(d) Within thirty (30) days from Lessor's receipt of the receipted copy of the paid tax bill, Lessor agrees to reimburse Sublessee for all taxes actually paid by the Sublessee resulting from (1) ad valorem tax assessments on the Cars and (2) any assessment, levy or imposit relating to each Car, the Sublease or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Sublessee or which are assessed, levied or imposed during the term of this Sublease, except taxes on income imposed on Sublessee and except a portion of gross receipts or sales or use tax imposed on mileage

charges or car hire revenue or sale or lease of the Cars. (Such gross receipts, sales or use taxes are hereinafter "Use Taxes".)

Use Taxes shall be apportioned between Sublessee and Lessor in the following manner: Sublessee's portion shall be calculated by multiplying said taxes by the ratio that payments to Sublessee under Subsection 7(c)(ii) for the calendar year bear to total Revenues received in that year. The ratio shall be estimated by Sublessee at the time the Use Taxes are paid, and Sublessee shall charge Lessor for its portion for the Use Taxes in accordance with this Subsection 5(d). Adjustments in the Use Taxes shall be made at the time the Final Calculation (Subsection 7(d)) is made and any amounts due either party shall be billed and paid in accordance with Subsection 7(d).

Sublessor and Sublessee shall comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Notwithstanding any portion of this Section, Sublessor and Lessor shall not be responsible for penalty or interest assessments resulting from Sublessee's failure to comply with any regulation or statute of any city, county, state or other taxing or assessing authority. Sublessee shall forward to Lessor upon receipt all correspondence, notifications or proposed tax assessments and tax bills associated with any tax reimbursable by Lessor and shall not pay such amount if Lessor elects to contest and instructs Sublessee to withhold payment. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment

or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees resulting from such contest.

6. Storage. As long as the Sublessee has sufficient room on its railroad tracks, Sublessee shall, at its expense and if deemed necessary by Lessor and Sublessee, store the Cars on its railroad tracks. In the event that Sublessee's capacity to handle any or all Cars on Sublessee's railroad tracks is impaired at any time, Sublessee shall be responsible for the following: (1) all reasonable transportation costs incurred to move the Cars to a storage location; (2) all reasonable transportation costs incurred in removing the Cars from the storage location; and (3) the actual costs incurred for the storage of any or all Cars. If Lessor or Sublessor pays for any costs referred to in this Section, Sublessee shall reimburse Lessor for such cost within ten (10) days from Sublessee's receipt of Lessor's invoice. Sublessor shall assist Sublessee so as to minimize Sublessee's exposure under this Section.

7. Lease Rental.

(a) Definitions.

(i) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, per diem and mileage, whether or not collected and received by Sublessor, and without regard to any claimed abatement, reduction or offset.

(ii) The "Utilization Rate" of the Cars shall be determined by a fraction, the numerator of which is the

aggregate number of days in each calendar year that Revenues were earned and payable on the Car commencing from Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars were on lease to Sublessee, commencing from Initial Loading.

(iii) For purposes of determining rent payable under Subsection 7(c) or by reason of early termination under Subsection 7(e), "Base Rental" shall initially be defined as a sum equal to the Revenues the Cars would have earned in the aggregate under ICC-authorized rates (currently Ex Parte No. 334) and any applicable AAR Code of Car Hire Rules, at a Utilization Rate of sixty-five percent (65%), and unreduced by any free days, bilateral agreements or other abatements or offsets. If during the Term the ICC no longer mandates or authorizes car compensation applicable to the Cars (under Ex Parte 334 or otherwise), Base Rental shall mean such sum as Lessor and Sublessee shall in good faith negotiate. In the absence of such agreement at least 60 days before the effective date of such deregulation by the ICC, Lessor or Sublessee may terminate this Sublease effective as of the date of deregulation by giving at least 40 days' prior written notice. In the absence of such notice, the Base Rental shall continue to be determined in the same manner provided for under ICC-authorized rates in effect immediately before the deregulation; provided, however, that in the absence of written agreement to the con-

trary, Lessor or Sublessee may terminate at any time after deregulation by giving at least 120 days' written notice.

(b) Sublessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3(a) shall become subject to the rental calculation under Subsection 7(c) upon the Initial Loading of such Car.

(c) Sublessee agrees to pay the following rent to Sublessor for the use of the Cars:

(i) In the event Revenues earned in any calendar year or applicable portion thereof are equal to or less than the Base Rental, Sublessor shall retain a sum equal to one hundred percent (100%) of the total Revenues.

(ii) In the event Revenues earned in any calendar year or portion thereof exceed the Base Rental, Sublessor shall retain an amount equal to the Base Rental plus fifty percent (50%) of all Revenues earned in excess of Base Rental and Sublessee shall receive the remaining fifty percent (50%) of all Revenues earned in excess of the Base Rental. For purposes of this subsection 7(c), all references to "Revenues earned" shall be deemed to mean only those Revenues earned (in the calendar year or applicable portion thereof which are actually received in that calendar year or in subsequent years) and which are not reclaimed or otherwise repaid.

(d) The calculations required in Subsection 7(c) shall be made within five (5) months after the end of each calendar



year ("Final Calculations"). However, to enable Sublessor to meet its financial commitments, Sublessor shall, prior to making such calculations, retain payments received by it on behalf of Sublessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 7(c), Sublessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation; provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

(e) If, with respect to any calendar quarter, Revenues are less than the Base Rental, Lessor may, at any time, at its option and upon not less than twenty (20) days' prior written notice to Sublessee, terminate this Sublease as to such Cars as Lessor shall determine; provided, however, that Sublessee may, at its option, within twenty (20) days of receipt of such notice from Lessor, void such termination notice by paying to Sublessor an amount equal to the difference between actual Revenues for such calendar quarter and the Base Rental for such calendar quarter.

(f) If, subsequent to the Initial Loading, any Car remains on Sublessee's railroad tracks or in storage as provided in Section 6 for more than seven (7) consecutive days, excluding

those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Sublessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Sublease as to such Car and take possession of such Car. Within seven (7) days of the later of (1) the Initial Loading or (2) the initial physical delivery of a Car to International Falls, Minnesota, or Kenora, Ontario, Canada, the Cars must be loaded for shipment; upon the failure to load the Car within this seven-day period, Sublessee shall be liable for and remit to Sublessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period beginning with the later of (1) or (2) above and ending when the Car is loaded.

(g) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Sublease on the date car hire ceased as set forth in the aforementioned Rule 7 and this Sublease shall terminate with respect to said Car. However, Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Sublessee.

(h) Sublessee shall permit Itel Rail, at Itel Rail's option, to participate in negotiating any Bilateral Agreement relating to any Cars, subject to Sublessee's approval of the terms and conditions contained therein. All such agreements shall be subject to written approval by Lessor. Bilateral Agreements include any action by Sublessee or Itel Rail that would cause abatement, reduction or offset of per diem or other Revenue payable by railroads other than the Sublessee for use or possession of Cars.

8. Possession and Use.

(a) Except as Lessor may have the right to terminate, so long as Sublessee shall not be in default under this Sublease, Sublessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Sublease and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 8(b). However, Sublessee's right shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the sale of the Cars which are the subject of this Sublease. Accordingly, following notice to Sublessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Sublease), and is continuing under such financing agreement, such party may require either or both: (1) that rentals and other sums due hereunder shall be paid directly to

such party and (2) that the Cars immediately be returned to such party upon completion of any freight movement then in progress. Delivery shall be made at any location as such party may specify with the cost of moving to such location borne by the party requiring delivery.

(b) Sublessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that Sublessor, Lessor or Sublessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.

(c) Use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. During the term of this Sublease, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.

(d) Sublessee shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other security interest or claim arising through it, on or with respect to the Cars, or any interest therein or in this Sublease or Schedule thereto. Sublessee

shall promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest or claim if the same shall arise at any time.

9. Default.

(a) The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Sublessee of any sum required herein to be paid by Sublessee within thirty (30) days after the date any such payment is due; provided that collection of car hire revenues by ITEL Rail on behalf of Sublessee shall be deemed to constitute payment under this Section 9;

(ii) The breach by Sublessee of any other term, covenant or condition of this Sublease, which is not cured within thirty (30) days thereafter;

(iii) The filing by or against the Sublessee of any petition or the initiation by or against the Sublessee of any proceedings: (1) for any relief which includes, or might result in, any modification of the obligations of Sublessee hereunder; or (2) under any bankruptcy, reorganization, insolvency, moratorium or other laws relating to the relief of debts, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness or extensions of indebtedness.

(iv) Any action by Sublessee to discontinue rail service on all of its track or to abandon all of its rail

properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

(b) Upon the occurrence of any event of default hereunder, without limiting Sublessor's and Lessor's rights and remedies otherwise provided by law which shall be available in addition to the following rights and remedies (no right or remedy of Sublessor or Lessor being exclusive but all such rights and remedies being available at all times and such parties in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Sublessor or Lessor in enforcing their or its rights and remedies hereunder), Lessor may, at its option, terminate this Sublease and/or may:

(i) Proceed by any lawful means to enforce performance by Sublessee of this Sublease or to recover damages for a breach thereof; and/or

(ii) By notice in writing to Sublessee, terminate Sublessee's right of possession and use of the Cars, whereupon all right and interest of Sublessee in the Cars shall terminate and Lessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Sublessee. Lessor shall, in addition, have the right to recover from Sublessee any and all rental amounts which under the terms of this Sublease may then be due or which may have accrued to that date, together with Lessor's and Sublessor's costs and expenses,

including reasonable attorneys' fees incurred in securing such enforcement hereof.

10. Expiration or Early Termination.

(a) Expiration. Upon expiration of the term of this Sublease, Sublessee shall promptly return such Car to Lessor at a location designated by Lessor as follows:

(i) If some or all Cars are to be delivered to Lessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to Sublessee's railroad tracks subsequent to the time of expiration. Sublessee shall, at Lessor's option, provide, with respect to any Car described on each Schedule which is either on Sublessee's railroad tracks at the time of expiration or is subsequently returned to Sublessee's railroad tracks, up to ninety (90) days free storage on its railroad tracks from either the date of the expiration or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of expiration, whichever is later. At the option of Lessor, either Sublessee or a contractor chosen by Lessor shall, at Lessor's expense, remark the Cars as set forth in Subsection 10(c) of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Sublessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

(ii) If some or all Cars are to be delivered to Lessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing and transporting each Car to such location shall be borne by Lessor. Lessor shall bear the expense of remarking such Car.

(b) Early Termination. Upon early termination of this Sublease with respect to any Car, whether pursuant to Section 9, Subsections 7(a)(iii), Subsection 7(e) or Subsection 7(f) hereof, Sublessee shall promptly return such Car to Lessor as follows:

(i) If some or all Cars are to be delivered to Lessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to Sublessee's railroad tracks subsequent to the time of early termination. Sublessee shall, at Lessor's option, provide, with respect to any Car described on each Schedule which is either on Sublessee's railroad tracks at the time of early termination or is subsequently returned to Sublessee's railroad, up to ninety (90) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of early termination, whichever date is later. At the option of Lessor, either Sublessee or a contractor chosen by Lessor shall, at Sublessee's expense, remark the Cars as set forth in Subsection 10(c) of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior



written consent of Sublessor. After remarking, Sublessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

(ii) If some or all Cars are to be delivered to Lessor at a location other than Sublessee's tracks or mutually agreed upon other railroad tracks, the cost of assembling, delivering, storing and transporting each Car to such location shall be borne by Sublessee. Provided, however, nothing in the foregoing shall obligate Sublessee to deliver Cars to a location which is greater than 1,000 miles from Sublessee's tracks.

(c) Remarking, with respect to each Car, shall include the following:

(i) removal of existing mandatory markings and all company logos of Sublessee;

(ii) complete cleaning subsequent to the removal of markings and company logos as designated by Sublessor;

(iii) application of new mandatory markings and company logos; and

(iv) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

(d) If the Utilization Rate (as defined in Section 7(a)(ii)) of the Car subject to this Sublease has not reached Ninety-Four percent (94%) for at least five consecutive calendar quarters prior to July 1, 1986, Lessor may terminate the August 31, 1979, Lease effective as of January 1, 1987 (or

any later date Lessor may designate), as to any Cars then subject to this Sublease by giving 90 days' prior written notice to Sublessor and Sublessee. In such event, this Sublease shall become a direct lease of such Cars from Lessor to Sublessee, effective as of the termination date designated in the notice, and the August 31, 1979, Lease shall be amended effective as of such date to exclude such Cars. After such date, all rights and obligations of Sublessee under this sublease shall remain unaffected.

11. Indemnities.

(a) SUBLESSEE SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSOR AND LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF SUBLESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN SUBLESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION OR LIABILITY TO SUBLESSEE (UNLESS CAUSED BY A LATENT DEFECT IN THE CAR).

(b) SUBJECT TO SUBSECTION 11.(a), AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH SUBLESSEE SHALL BE RESPONSIBLE OR IS REQUIRED TO INSURE AGAINST AS SET FORTH HEREIN, LESSOR WILL DEFEND, INDEMNIFY AND HOLD SUBLESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE OCCASIONED BY THE FAULT OF LESSOR AND WHICH

IS ASSERTED AGAINST SUBLESSEE WITH RESPECT TO THE MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY LESSOR OR SUBLESSEE).

(c) THE FOREGOING INDEMNITIES INCLUDE THE OBLIGATION TO PROVIDE AND PAY FOR LEGAL COUNSEL REQUIRED TO DEFEND AGAINST CAUSES OF ACTION ASSERTED AGAINST THE INDEMNIFIED PARTY. THE FOREGOING OBLIGATIONS OF LESSOR AND SUBLESSEE SHALL EXCLUDE CLAIMS FOR CONSEQUENTIAL DAMAGES BY LESSOR, SUBLESSOR AND SUBLESSEE.

12. Representations, Warranties and Covenants. Sublessee represents, warrants and covenants that:

(a) Sublessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and, insofar as is material to Lessor's or Sublessor's rights under this Sublease, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Sublease.

(b) The entering into and performance of this Sublease will not violate any judgment, order, law or regulation applicable to Sublessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of

Sublessee or on the Cars pursuant to any instrument to which Sublessee is a party or by which it or its assets may be bound.

(c) No action or proceeding pending or threatened against Sublessee before any court or administrative agency or other governmental body has been initiated which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Sublessee such that Sublessee's ability to perform its obligations hereunder would be materially and adversely affected.

(d) No fact exists which Sublessee has not disclosed to Sublessor and Lessor in writing, nor is Sublessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Sublessee can now reasonably foresee, will individually or in the aggregate materially and adversely affect the business, condition or any material portion of the properties of the Sublessee or the ability of the Sublessee to perform its obligation under this Sublease.

13. Inspection. Sublessor and Lessor shall at any time during normal business hours have the right to enter any premises where the Cars may be located which is under the control of Sublessee for the purpose of inspecting and examining the Cars to ensure Sublessee's compliance with its obligations hereunder.

14. Conditions of Lessor's Consent to Sublease. Lessor hereby gives its written consent for Sublessor and Sublessee to enter into this Sublease for the Cars described on Equipment

Schedule No. 1 attached hereto which are subject to a Lease Agreement ("Lease") dated August 31, 1979, between Lessor as Lessor and East Camden and Highland Railroad Company as Lessee. Lessor's consent is specifically conditioned on the following: (1) Sublessor's and Sublessee's agreement that Sublessor shall remain primarily liable for the payment of the rent set forth in the Lease and for the performance of all the other terms of the Lease to be performed by the Sublessor; (2) Sublessor's and Sublessee's agreement that the Sublease is subject and subordinate to the rights of Lessor under the Lease and (3) Sublessor's and Sublessee's agreement that Lessor is deemed to be a third-party beneficiary of this Sublease and is hereby granted all rights of Sublessor (including all rights to collect Revenue and to enforce the terms and conditions hereof) under this Sublease but is not subject to any of Sublessor's obligations hereunder unless the Lease is terminated pursuant to Section 10(d) hereof. Sublessor also agrees that the rental and other amounts, if any, to be paid Sublessor under this Sublease shall be considered to be "Payments" as that term is used in the August 31, 1979, Lease and that "Payments" under such Lease shall not include any Revenues Sublessor is entitled to receive under this Sublease.

15. Miscellaneous.

(a) This Sublease and the Schedules contemplated hereby and signed by the parties shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Sublessee may

not, without the prior written consent of Lessor, assign this Sublease or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

(b) The parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the sale or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Sublease and Schedules hereto and in order to confirm the subordination provisions contained in Section 8 of this Sublease.

(c) The parties hereto expressly understand and agree that this Sublease constitutes a lease of the Cars only and that no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Sublessee any right, title or interest in the Cars, except as a sublessee only.

(d) No failure or delay by Sublessor or Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Sublessor or Lessor, nor shall any waiver or indulgence by Sublessor or Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

(e) This Sublease shall be governed by and construed according to the laws of the state of Illinois.

(f) Sublessee shall notify Lessor as soon as is practicable of any accident connected with the malfunctioning or operation of any Car, including in such report, where available, the time, place and nature of the accident and the damage caused.

(g) Sublessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.

(h) Sublessee shall furnish to Sublessor and Lessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

(i) All notices hereunder shall be in writing and shall be deemed given when delivered or when deposited in the United States mail, postage prepaid, certified or registered, addressed to an officer of the other party at the address set forth herein.

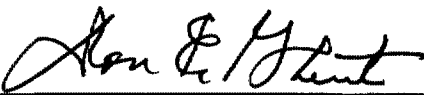
(j) The expiration or early termination of this Sublease shall not relieve any party from an obligation or liability which accrued before such expiration or termination.

(k) This Sublease represents the entire Sublease.

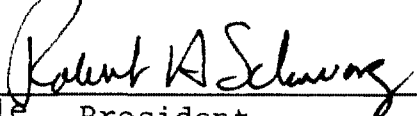
This Sublease shall not be modified, altered or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the date first above written.

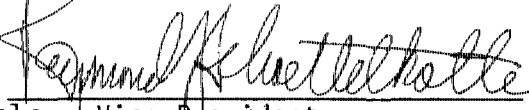
EAST CAMDEN AND HIGHLAND  
RAILROAD COMPANY

By   
Title Exe. Vice President  
Date September 7, 1984

MINNESOTA, DAKOTA AND WESTERN  
RAILWAY COMPANY

By   
Title President  
Date August 28, 1984

FMC FINANCE CORPORATION

By   
Title Vice President  
Date September 5, 1984

L94240A

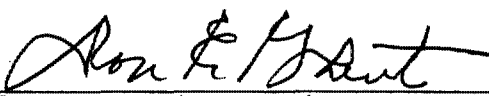


Equipment Schedule No. I

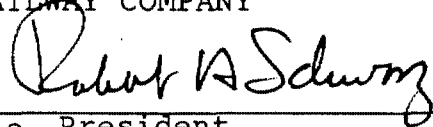
East Camden and Highland Railroad Company hereby subleases the following Cars to Minnesota, Dakota and Western Railway Company subject to the terms and conditions of that certain Sublease dated as of August 27, 1984.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XM	50', Boxcar, Plate C, End of Car Cushioning, Nailable Steel Floors	MDW 5000-5099	50'6"	9'6"	11'1"	12' Plug	100

EAST CAMDEN AND HIGHLAND  
RAILROAD COMPANY


By   
Title Exe. Vice President  
Date September 7, 1984

MINNESOTA, DAKOTA AND WESTERN  
RAILWAY COMPANY

By   
Title President  
Date August 28, 1984

ACKNOWLEDGMENT AND CONSENT:

FMC FINANCE CORPORATION

By   
Title Vice President  
Date September 5, 1984

L94240A

STATE OF ARKANSAS )  
 ) ss.  
COUNTY OF OUACHITA )

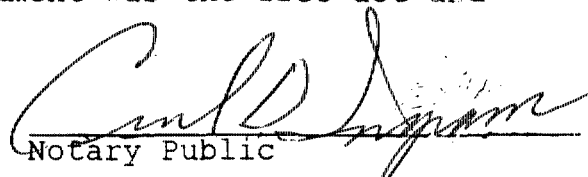
On this 7th day of SEPTEMBER, 1984, before me personally appeared DON E. GHENT, to me personally known, who being by me sworn says that such person is Exe. Vice President of East Camden and Highland Railroad Company, that the foregoing Sublease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation

  
Notary Public

MY COMMISSION EXPIRES 11-15-84

STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

On this 28th day of August, 1984, before me personally appeared Robert H. Schwarz, to me personally known, who being by me duly sworn says that such person is president of Minnesota, Dakota and Western Railway Company, that the foregoing Sublease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

STATE OF ILLINOIS

COUNTY OF COOK

)  
ss.

On this 5<sup>th</sup> day of September, 1984, before me personally appeared R.D. Schmitt, to me personally known, who being by me sworn says that such person is Vice President of FMC Finance Corporation, that the foregoing Sublease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation

[Signature]  
Notary Public

My comm. expires OCTOBER 19, 1984

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